

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 123 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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COMMISSIONER OF INCOME TAX

Versus

UNITED CHEMIC

Appearance:

1. INCOME TAX REFERENCE No. 123 of 1988
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,
the following question is referred for the opinion of
this Court in respect of assessment year 1979-80 :-

"Whether, on the facts and in the circumstances
of the case, the Appellate Tribunal is right in
law in confirming the order of the CIT(A)
directing the ITO to allow the registration to
the firm ?"

2. The assessee is a partnership firm. During the
year under consideration, there was a change in the
constitution of the firm. Three partners retired with
effect from 31.3.1978. A new partner joined the firm
with effect from 1.4.1978 with 25% share in its profits
and losses. The new partner viz. Smt Vijay Goenka was
the Managing Trustee of a specific trust known as Srikant
Benefit Trust. The sole beneficiary of the trust was a
minor named Mr Srikant Goenka. The ITO did not grant
registration to the firm on the ground that by the device
of admitting the trustee of a trust whose sole
beneficiary was a minor, the minor in fact has been made
a full fledged partner so as to share the losses of the
firm as well. The ITO, therefore, refused to grant
registration. On appeal, the CIT(A) allowed the appeal
and directed the ITO to allow registration to the
assessee-firm. The Tribunal confirmed the decision of
the CIT(A) on the ground that in so far as the character
of the firm as a genuine entity is concerned, that does
not stand disturbed by the responsibility and
accountability of a partner to the members whom he may be
representing in his fiduciary relationship or other
capacity. After giving such a partner his due whether of
the profits or of the losses, the firm is not concerned
as to where does he take the same. The genuineness of
the firm is not affected by his act or conduct done or
exhibited beyond or outside the scope of partnership
deed. Whether he brings profits or losses for the
persons to whom he is responsible or accountable is a
matter between him and such other persons and not a
matter between him and the firm.

3. We have heard Mr BB Naik, learned counsel for the
revenue. Though served, none appears for the
respondent-assessee.

4. Having heard the learned counsel for the revenue
and having gone through the decision of the Apex Court in
CIT vs. Bhagyalakshmi & Co., (1965) 55 ITR 660, we are
of the view that the Tribunal applied the correct
principle that the contract of partnership has no concern

with the obligation of the partners to others in respect of their shares of profit in the partnership. It only regulates the rights and liabilities of the partners. In a case like the present one, a partner who is a trustee of the trust of which the minor is the sole beneficiary, the trustee functions in dual capacity. Qua the partnership, the person functions in his personal capacity; qua the beneficiary of the trust, in his representative capacity. The Tribunal thus having applied the correct principles, the Tribunal was right in confirming the order of the CIT(A) directing the ITO to allow the registration to the firm.

Accordingly we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-